BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY
For

Rulemaking for numeric water quality standards for the Tongue River and Powder River, Little Powder River, Rosebud Creek and their tributaries for Electrical Conductivity (EC) and Sodium Adsorption Ratio (SAR).

AGENDA # III B. 6.

AGENDA ITEM SUMMARY

The Board has initiated rulemaking for numeric water quality standards for Electric Conductivity (EC) and Sodium Adsorption Ratio (SAR) for the waters of the Tongue and Powder River basins. Rulemaking was initiated on the Department's two proposals, and on a petition by irrigation groups and the Northern Plains Resource Council. Following the July 29 meeting, the Board directed the parties to enter into a collaborative process, to determine if the different positions could be resolved. The collaborative met five times over a two month period, but was unable to reach a consensus position. The discussions did, however, further the debate on appropriate standards. Attached are the final agreement of the collaborative group, which describes the very general areas of agreement between the parties, and a statement that describes the differences in the groups' positions at the conclusion of the collaborative effort. The group's facilitator, Tim Chamberlain of the Montana Consensus Council, will address the Board to provide his perspective on the collaborative effort.

The department continued to work individually with the parties following the end of the collaborative. Much progress has been made in narrowing the range of numeric standards that the parties find acceptable. The attached draft rule contains some modifications to the department's original proposals. The changes are described and a rationale provided in the attached draft responses to comment.

Much of the disagreement between the parties that remains is a matter of the process and procedures used to implement the standards. These issues include the application of the nondegradation provisions, and the use of flow-base permitting or authorizations. In very general terms, industry prefers the department's nondegradation proposal, which retains the nondeg thresholds at the same level they would be under a narrative standard. The petitioners prefer application of lower thresholds for nondeg, similar to the approach used for other parameters that are regulated through numeric standards. Industry can generally support the use of numeric standards, so long as the department commits through supplemental rulemakng to the use of a flow based permitting protocol and the nonseverability of the nondegradation approach.

LIST OF AFFECTED RULES

The Rules that may result from this effort will be new rules in ARM 17.30.601 et.seq.

AFFECTED PARTIES SUMMARY

Affected parties include all potential coal bed methane producers and all irrigators in the Montana portion of the Tongue and Powder River Basins.

SCOPE OF PROPOSED PROCEEDING

The department will brief the Board on the progress of the collaborative group and the efforts that followed, and explain the proposed changes in the rules. The Board may proceed with the adoption or rejection of numeric standards at this meeting, or it may delay such action until after supplemental rulemaking is initiated at the Board's next meeting in late January.

HEARING INFORMATION

No hearing is required at this time. An additional hearing would be planned if the Board initiates supplemental rulemaking at the next meeting.

BOARD OPTIONS

The Board may adopt or reject rules based on the rulemaking already initiated, or it may postpone that action until supplemental rulemaking has been initiated.

DEQ RECOMMENDATION

The department recommends that the Board delay the adoption or rejection of new rules, until the department initiates supplemental rulemaking at the next meeting. The department recommends that the Board take action on the entire rulemaking package at one time, probably at the meeting of March or May 2003.

ENCLOSURES

New draft rules based on comments, dated 11/22/02
Draft responses to comments, dated 11/22/02
Coal Bed Methane Collaborative Agreement, Final Draft
Collaborative Group Context Statement